

SCHEDULES

SCHEDULE 2 ^{F1}

RIGHTS OF SHOP WORKERS AS RESPECTS SUNDAY WORKING

F1 functions transf. by SR 1999/481
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Interpretation

1.—(1) In this Schedule “shop worker” means an employee who, under his contract of employment, is or may be required to do shop work.

(2) In this Schedule “shop work” means work in or about a shop on a day on which the shop is open for the serving of customers.

(3) Subject to sub-paragraph (4), in this Schedule “shop” includes any premises where any retail trade or business is carried on.

(4) Where premises are used mainly for purposes other than those of retail trade or business and would not (apart from sub-paragraph (3)) be regarded as a shop, only such part of the premises as—

- (a) is used wholly or mainly for the purposes of retail trade or business; or
- (b) is used both for the purposes of retail trade or business and for the purposes of wholesale trade and is used wholly or mainly for those two purposes considered together,

is to be regarded as a shop for the purposes of this Schedule.

(5) In sub-paragraph (4)(b) “wholesale trade” means the sale of goods for use or resale in the course of a business or the hire of goods for use in the course of a business.

(6) In this paragraph “retail trade or business” includes—

- (a) the business of a barber or hairdresser;
- (b) the business of hiring goods otherwise than for use in the course of a trade or business; and
- (c) retail sales by auction,

but does not include catering business or the sale at theatres and places of amusement of programmes, catalogues and similar items.

(7) In sub-paragraph (6) “catering business” means—

- (a) the sale of meals, refreshments or intoxicating liquor for consumption on the premises on which they are sold; or
- (b) the sale of meals or refreshments prepared to order for immediate consumption off the premises.

(8) In this Schedule—

“notice period”, in relation to an opted-out shop worker, has the meaning given by paragraph 7(3);

“opted-out”, in relation to a shop worker, shall be construed in accordance with paragraph 7(1) and (2);

Changes to legislation: There are currently no known outstanding effects for the *The Shops (Sunday Trading &c.) (Northern Ireland) Order 1997*. (See end of Document for details)

“opting-in notice”, in relation to a shop worker, has the meaning given by paragraph 2(6);
“opting-out notice”, in relation to a shop worker, has the meaning given by paragraph 6(2); and
“protected”, in relation to a shop worker, shall be construed in accordance with paragraph 2(1) to (5).

(9) This Schedule shall be construed as one with the Employment Rights (Northern Ireland) Order 1996, referred to in this Schedule as “the Employment Rights Order”.

(10) Chapter III of Part I of the Employment Rights Order (computation of period of continuous employment) shall have effect for the purposes of this Schedule as it has effect for the purposes of that Order.

Sub#paras. (11)#(12) rep. by 1999 NI 9

Protected shop workers

2.—(1) Subject to sub-paragraph (5), a shop worker is to be regarded as “protected” for the purposes of any provision of this Schedule if (and only if) sub-paragraph (2) or (3) applies to him.

(2) This sub-paragraph applies to a shop worker if—

- (a) on the day before the commencement date, he was employed as a shop worker, but not to work only on Sunday;
- (b) he has been continuously employed during the period beginning with that day and ending with the day which, in relation to the provision concerned, is the appropriate date; and
- (c) throughout that period, or throughout every part of it during which his relations with his employer were governed by a contract of employment, he was a shop worker.

(3) This sub-paragraph applies to any shop worker whose contract of employment is such that under it he—

- (a) is not, and may not be, required to work on Sunday; and
- (b) could not be so required even if the provisions of this Schedule were disregarded.

(4) Where on the day before the commencement date an employee's relations with his employer have ceased to be governed by a contract of employment, he shall be regarded as satisfying sub-paragraph (2)(a) if—

- (a) that day fell in a week which counts as a period of employment with that employer under Article 8(2) or (3) of the Employment Rights Order or under regulations under Article 15 of that Order; and
- (b) on the last day before the commencement date on which his relations with his employer were governed by a contract of employment, the employee was employed as a shop worker, but not to work only on Sunday.

(5) A shop worker is not a protected shop worker if—

- (a) he has given his employer an opting-in notice on or after the commencement date; and
- (b) after giving the notice, he has expressly agreed with his employer to do shop work on Sunday or on a particular Sunday.

(6) In this Schedule “opting-in notice”, in relation to a shop worker, means written notice, signed and dated by the shop worker, in which the shop worker expressly states that he wishes to work on Sunday or that he does not object to Sunday working.

Contractual requirements relating to Sunday work

3.—(1) Any contract of employment under which a shop worker who satisfies paragraph 2(2)(a) was employed on the day before the commencement date is unenforceable to the extent that it—

- (a) requires the shop worker to do shop work on Sunday on or after that date, or
- (b) requires the employer to provide the shop worker with shop work on Sunday on or after that date.

(2) Subject to paragraph (3), any agreement entered into after the commencement date between a protected shop worker and his employer is unenforceable to the extent that it—

- (a) requires the shop worker to do shop work on Sunday, or
- (b) requires the employer to provide the shop worker with shop work on Sunday.

(3) Where, after giving an opting-in notice, a protected shop worker expressly agrees with his employer to do shop work on Sunday or on a particular Sunday (and so ceases to be protected), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.

Sub#para. (4) rep. by 1999 NI 9

(5) For the purposes of paragraph 2(2)(b), the appropriate date—

- (a) in relation to sub-paragraphs (2) and (3), is the day on which the agreement is entered into;^{F1} . . .

F1 1999 NI 9

Contracts with guaranteed hours

4.—(1) This paragraph applies where—

- (a) under the contract of employment under which a shop worker who satisfies paragraph 2(2) (a) was employed on the day before the commencement date, the employer is, or may be, required to provide him with shop work for a specified number of hours each week;
- (b) under the contract the shop worker was, or might have been, required to work on Sunday before the commencement date; and
- (c) the shop worker has done shop work on Sunday in that employment (whether or not before the commencement date) but has, on or after that date ceased to do so.

(2) So long as the shop worker remains a protected shop worker, the contract shall not be regarded as requiring the employer to provide him with shop work on weekdays in excess of the hours normally worked by the shop worker on weekdays before he ceased to do shop work on Sunday.

(3) For the purposes of paragraph 2(2)(b), the appropriate date in relation to this paragraph is any time in relation to which the contract is to be enforced.

Reduction of pay, etc.

5.—(1) This paragraph applies where—

- (a) under the contract of employment under which a shop worker who satisfies paragraph 2(2) (a) was employed on the day before the commencement date, the shop worker was, or might have been, required to work on Sunday before the commencement date;
- (b) the shop worker has done shop work on Sunday in that employment (whether or not before the commencement date) but has, on or after that date, ceased to do so; and

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(c) it is not apparent from the contract what part of the remuneration payable, or of any other benefit accruing, to the shop worker was intended to be attributable to shop work on Sunday.

(2) So long as the shop worker remains a protected shop worker, the contract shall be regarded as enabling the employer to reduce the amount of remuneration paid, or the extent of the other benefit provided, to the shop worker in respect of any period by the relevant proportion.

(3) In sub-paragraph (2) “the relevant proportion” means the proportion which the hours of shop work which (apart from this Schedule) the shop worker could have been required to do on Sunday in the period (“the contractual Sunday hours”) bears to the aggregate of those hours and the hours of work actually done by the shop worker in the period.

(4) Where, under the contract of employment, the hours of work actually done on weekdays in any period would be taken into account in determining the contractual Sunday hours, they shall be taken into account in determining the contractual Sunday hours for the purposes of sub-paragraph (3).

(5) For the purposes of paragraph 2(2)(b), the appropriate date in relation to this paragraph is the end of the period in respect of which the remuneration is paid or the benefit accrues.

Notice of objection to Sunday working

6.—(1) A shop worker to whom this paragraph applies may at any time give his employer written notice, signed and dated by the shop worker, to the effect that he objects to Sunday working.

(2) In this Schedule “opting-out notice” means a notice given under sub-paragraph (1) by a shop worker to whom this paragraph applies.

(3) This paragraph applies to any shop worker who under his contract of employment—

- (a) is or may be required to work on Sunday (whether or not as a result of previously giving an opting-in notice); but
- (b) is not employed to work only on Sunday.

Meaning of “opted-out shop worker”

7.—(1) Subject to sub-paragraph (2), a shop worker is to be regarded as “opted-out” for the purposes of this Schedule if (and only if)—

- (a) he has given his employer an opting-out notice;
- (b) he has been continuously employed during the period beginning with the day on which the notice was given and ending with the day which, in relation to the provision concerned, is the appropriate date; and
- (c) throughout that period, or throughout every part of it during which his relations with his employer were governed by a contract of employment, he was a shop worker.

(2) A shop worker is not an opted-out shop worker if—

- (a) after giving the opting-out notice concerned, he has given his employer an opting-in notice; and
- (b) after giving the opting-in notice, he has expressly agreed with his employer to do shop work on Sunday or on a particular Sunday.

(3) In this Schedule “notice period”, in relation to an opted-out shop worker, means, subject to paragraph 8(2), the period of three months beginning with the day on which the opting-out notice concerned was given.

Explanatory statement

8.—(1) Where a person becomes a shop worker to whom paragraph 6 applies, his employer shall, before the end of the period of two months beginning with the day on which that person becomes such a worker, give him a written statement in the prescribed form.

(2) If—

- (a) an employer fails to comply with sub-paragraph (1) in relation to any shop worker; and
- (b) the shop worker, on giving the employer an opting-out notice, becomes an opted-out shop worker,

paragraph 7(3) has effect in relation to the shop worker with the substitution for “three months” of “one month”.

(3) An employer shall not be regarded as failing to comply with sub-paragraph (1) in any case where, before the end of the period referred to in that sub-paragraph, the shop worker has given him an opting-out notice.

(4) Subject to sub-paragraph (5), the prescribed form is as follows—

“STATUTORY RIGHTS IN RELATION TO SUNDAY SHOP WORK

You have become employed as a shop worker and are or can be required under your contract of employment to do the Sunday work your contract provides for.

However, if you wish, you can give a notice, as described in the next paragraph, to your employer and you will then have the right not to work in or about a shop on any Sunday on which the shop is open once three months have passed from the date on which you gave the notice.

Your notice must—

- be in writing;
- be signed and dated by you;
- say that you object to Sunday working.

For three months after you give the notice, your employer can still require you to do all the Sunday work your contract provides for. After the three month period has ended, you have the right to complain to an industrial tribunal if, because of your refusal to work on Sundays on which the shop is open, your employer—

- dismisses you, or
- does something else detrimental to you, for example, failing to promote you.

Once you have the rights described, you can surrender them only by giving your employer a further notice, signed and dated by you, saying that you wish to work on Sunday or that you do not object to Sunday working and then agreeing with your employer to work on Sundays or on a particular Sunday.”

(5) The Department of Economic Development may by order subject to negative resolution amend the prescribed form set out in sub-paragraph (4).

Contractual requirements relating to Sunday work

9.—(1) Where a shop worker gives his employer an opting-out notice, the contract of employment under which he was employed immediately before he gave that notice becomes unenforceable to the extent that it—

- (a) requires the shop worker to do shop work on Sunday after the end of the notice period; or

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- (b) requires the employer to provide the shop worker with shop work on Sunday after the end of that period.
- (2) Subject to sub-paragraph (3), any agreement entered into between an opted-out shop worker and his employer is unenforceable to the extent that it—
 - (a) requires the shop worker to do shop work on Sunday after the end of the notice period; or
 - (b) requires the employer to provide the shop worker with shop work on Sunday after the end of that period.
- (3) Where, after giving an opting-in notice, an opted-out shop worker expressly agrees with his employer to do shop work on Sunday or on a particular Sunday (and so ceases to be opted-out), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.

Sub#para. (4) rep. by 1999 NI 9

- (5) For the purposes of paragraph 7(1)(b), the appropriate date—
 - (a) in relation to sub-paragraphs (2) and (3), is the day on which the agreement is entered into,^{F2} . . .

Head (b) rep. by 1999 NI 9

F2 1999 NI 9

Right not to suffer detriment for refusing Sunday work

10.—(1) An employee who is a protected shop worker or an opted-out shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee refused (or proposed to refuse) to do shop work on Sunday or on a particular Sunday.

(2) Sub-paragraph (1) does not apply to anything done in relation to an opted-out shop worker on the ground that he refused (or proposed to refuse) to do shoe work on any Sunday or Sundays falling before the end of the notice period.

(3) An employee who is a shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee gave (or proposed to give) an opting-out notice to his employer.

(4) Sub-paragraphs (1) and (3) do not apply where the detriment in question amounts to dismissal (within the meaning of Part XI of the Employment Rights Order).

(5) For the purposes of this paragraph a shop worker who does not work on Sunday or on a particular Sunday is not to be regarded as having been subjected to any detriment by—

- (a) a failure to pay remuneration in respect of shop work on a Sunday which he has not done,
- (b) a failure to provide him with any other benefit, where that failure results from the application (in relation to a Sunday on which the employee has not done shop work) of a contractual term under which the extent of that benefit varies according to the number of hours worked by the employee or the remuneration of the employee; or
- (c) a failure to provide him with any work, remuneration or other benefit which by virtue of paragraph 4 or 5 the employer is not obliged to provide.

(6) Where an employer offers to pay a sum specified in the offer to any one or more employees—

- (a) who are protected shop workers or opted-out shop workers; or
- (b) who under their contracts of employment are not obliged to do shop work on Sunday,

if they agree to do shop work on Sunday or on a particular Sunday sub-paragraphs (7) and (8) apply.

(7) An employee to whom the offer is not made is not to be regarded for the purposes of this paragraph as having been subjected to any detriment by any failure to make the offer to him or to pay him the sum specified in the offer.

(8) An employee who does not accept the offer is not to be regarded for the purposes of this paragraph as having been subjected to any detriment by any failure to pay him the sum specified in the offer.

(9) For the purposes of paragraph 2(2)(b) or 7(1)(b), the appropriate date in relation to this paragraph is the date of the act or failure to act.

(10) For the purposes of sub-paragraph (9)—

(a) where an act extends over a period, the “date of the act” means the first day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(11) Articles 71 and 72 of the Employment Rights Order (which relate to proceedings brought by an employee^[F3] or, as the case may be, worker] on the ground that he has been subjected to a detriment in contravention of Article 68,^[F4] 69,^[F3] 70, 70A or 70B]] of that Order) shall have effect as if the reference in Article 71 to those Articles included a reference to this paragraph.

(12) Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation) has effect in relation to industrial tribunal proceedings, or claims which could be the subject of tribunal proceedings, arising out of a contravention or alleged contravention of this paragraph.

(13) The remedy of an employee for infringement of the right conferred by this paragraph is by way of proceedings as mentioned in sub-paragraph (11) and not otherwise.

Sub#para. (14) rep. by 1999 NI 9

(15) Articles 248 and 249 of the Employment Rights Order (death of employee or employer) applies in relation to this paragraph as they apply in relation to provisions of the Employment Rights Order listed in Article 248(2) of that Order.

F3 1998 NI 17

F4 1998 NI 15

Right not to be dismissed for refusing Sunday work

11.—(1) Where an employee who is a protected shop worker or an opted-out shop worker is dismissed, he shall be regarded for the purposes of Part XI of the Employment Rights Order as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that he refused, or proposed to refuse, to do shop work on Sunday or on a particular Sunday.

(2) Sub-paragraph (1) does not apply in relation to an opted-out shop worker where the reason (or principal reason) for the dismissal is that he refused, or proposed to refuse, to do shop work on any Sunday or Sundays falling before the end of the notice period.

(3) A shop worker who is dismissed shall be regarded for the purposes of Part XI of the Employment Rights Order as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the shop worker gave, or proposed to give, an opting-out notice to the employer.

(4) For the purposes of paragraph 2(2)(b) or 7(1)(b), the appropriate date in relation to this paragraph is the effective date of termination.

Sub#para. (5) rep. by 1999 NI 9

12.—(1) An employee who is dismissed shall be regarded for the purposes of Part XI of the Employment Rights Order as unfairly dismissed if—

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant;
- (b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer; and
- (c) it is shown that sub-paragraph (2) applies.

(2) This sub-paragraph applies if either—

- (a) the employee was a protected shop worker or an opted-out shop worker and the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in sub-paragraph (1) of paragraph 11 (read with sub-paragraph (2) of that paragraph); or
- (b) the employee was a shop worker and the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in sub-paragraph (3) of that paragraph.

(3) For the purposes of paragraph 2(2)(b) or 7(1)(b), the appropriate date in relation to this paragraph is the effective date of termination.

13. Articles 140 and 141 of the Employment Rights Order (qualifying period of employment and upper age limit)^{F5} . . . do not apply if—

- (a) sub-paragraph (1) of paragraph 11 (read with sub-paragraph (2) of that paragraph) or sub-paragraph (3) of that paragraph applies; or
- (b) paragraph 12 applies.

F5 1998 NI 8

Restrictions on contracting out of Schedule

14.—(1) Any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Schedule; or
- (b) to preclude any person from presenting a complaint to an industrial tribunal by virtue of any provision of this Schedule.

(2) Sub-paragraph (1) does not apply to an agreement to refrain from presenting or continuing with a complaint where—

- (a) the Agency has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation); or
- (b) the conditions regulating compromise agreements (as set out in Article 245(3) of the Employment Rights Order) are satisfied in relation to the agreement.

Changes to legislation: There are currently no known outstanding effects for the The Shops (Sunday Trading &c.) (Northern Ireland) Order 1997. (See end of Document for details)

Dismissal on grounds of assertion of statutory right

15. In Article 135 of the Employment Rights Order (dismissal on grounds of assertion of statutory right) in paragraph (4)(a) after “this Order” insert “or Schedule 2 to the Shops (Sunday Trading &c.) (Northern Ireland) Order 1997”.

Changes to legislation:

There are currently no known outstanding effects for the The Shops (Sunday Trading &c.) (Northern Ireland) Order 1997.